

TECHNOLOGY

CONFIDENTIALITY & PUBLIC RECORDS



PUBLIC EMPLOYEE RETIREMENT
ADMINISTRATION COMMISSION

TECHNOLOGY

C O N F I D E N T I A L I T Y
& P U B L I C R E C O R D S

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1. Introduction

RETIREMENT BOARDS HOLD A LARGE AMOUNT OF INFORMATION REGARDING MEMBERS, THE RETIREMENT SYSTEM, AND ITS ACTIVITIES. This information is maintained by way of a variety of media, including hard copy, electronic data files, other computer files, and e-mail. Much of the information is open to public inspection and release.

Some information is strictly confidential and can not be released in response to a public record request. This includes social security numbers, medical records, and tax information. When dealing with medical records, retirement board members and staff must take special care in preserving member's privacy. This includes assuring that medical records are not left out for visitors to see and not discussing such information among staff in areas accessible to the public. State law (G.L. c. 66A) requires public entities and employees to assure that non-public records are kept confidential.

The release of information that is non-confidential should only be made as the result of a written public records requests. A custodian cannot, however, require a public record requestor to file a written request. The board official designated as the keeper of records should become familiar with the applicable laws and Commission regulations (text follows). In instances where it is unclear whether information is confidential or not, the board should seek the advice of board counsel or the Supervisor of Public Records before releasing such information.

The board has a responsibility to ensure a proper procedure is in effect to guarantee confidentiality. All staff should be made aware of their legal

obligations. Many public and non-public holders of such information have strict rules on how such information is handled. As an example, some hospitals forbid discussion of patient's information in elevators and post notices to keep staff vigilant.

The Commission chose to develop a Confidentiality Agreement (text follows) which is signed by all current and new staff. The Agreement informs staff of their legal obligations and requires them to promise to maintain such information as confidential. Also included is the Commission's Information Technology Resources Policy (text follows) which addresses the need for confidentiality when using resources such as e-mail.

Maintaining confidentiality requires constant vigilance by the board and board staff. ◆

2. PERAC E-mail Preservation Policy

E-MAIL:

All e-mail messages should be construed as public records and should be used for business use only. Employees should adhere to the following e-mail guidelines:

PRESERVATION OF E-MAIL

Just as one would save a copy of a written letter that one sent or received, e-mail messages sent or received by Commission employees for official purposes must be preserved. Such messages must be treated as “records” or “public records” which may not be destroyed without approval of the Record Conservation Board. All employees must preserve any e-mail message that documents either the process or the substance of any “official matter.” An official matter includes but is not limited to correspondence related to policy/decision making, questions received or answered, cases or projects regardless of whether they are substantial or minor and regardless of whether they are past, pending or potential in nature. In addition, the sender of a multi-recipient message has the responsibility of preserving a copy of that e-mail message. E-mail meeting requests and acknowledgements or other items that are noted on the sender and recipient’s calendars need not be retained.

Any e-mail which must be retained must also be

printed out. When an employee prints out an e-mail message, it must be filed in an appropriate case or subject matter file and then deleted from the system. Any item that does not relate to a particular file must be saved in a general file. Any e-mail messages containing non-official business should be promptly deleted.

You should be aware that some e-mail messages you receive might contain legal questions for the Commission. Only legal unit staff should be answering legal questions in order to protect the Commission from liability. A special area of our web sight has been developed to allow for submission of legal questions. If you receive a legal question via e-mail, you should forward it to the Administrative Assistant to the General Counsel for processing. If you are unsure whether a question is legal in nature, you should err on the side of caution and forward it. The same policy applies to telephone inquiries. ♦

3. PERAC Policy on the Use of Information Technology Resources

This is the official Information Technology Resources policy of the Public Employee Retirement Administration Commission. This policy was derived from the Executive Office for Administration and Finance's policy and has been adapted for the Commission's use. This document formalizes the policy for employees and contractors ("users") on the use of information technology resources ("ITRs"), including computers, printers and other peripherals, programs, data, local and wide area networks, the Internet, photocopiers and facsimile machines. Use of Commission ITRs by an employee or contractor shall constitute acceptance of the terms of this policy and any such additional policies.

1. USER RESPONSIBILITIES

It is the responsibility of any person using Commission ITRs to read, understand, and follow this policy. In addition, users are expected to exercise reasonable judgement in interpreting this policy and in making decisions about the use of ITRs. Any person with questions regarding the application or meaning of this policy should seek

clarification from their supervisor. Failure to observe this policy may subject individuals to disciplinary action, including termination of employment.

2. ACCEPTABLE USES

The Commission firmly believes that ITRs empower users and make their jobs more fulfilling by allowing them to deliver better services at lower costs. As such, employees and contractors are encouraged to use ITRs to the fullest extent in pursuit of the Commission's goals and objectives.

3. UNACCEPTABLE USES OF COMMISSION ITRS

It is unacceptable for any person to use Commission ITRs:

- in furtherance of any illegal act, including violation of any criminal or civil laws or regulations, whether state or federal;
- for any political purpose;
- for any commercial purpose;

- to send threatening or harassing messages, whether sexual or otherwise;
- to access or share sexually explicit, obscene, or otherwise inappropriate materials;
- to infringe any intellectual property rights;
- to gain, or attempt to gain, unauthorized access to any computer or network;
- for any use that causes interference with or disruption of network users and resources, including propagation of computer viruses or other harmful programs;
- to intercept communications intended for other persons;
- to misrepresent either the Commission or a person's role at the Commission;
- to distribute chain letters;
- to access online gambling sites; or
- to libel or otherwise defame any person.

4. DATA CONFIDENTIALITY

In the course of performing their jobs, Commission employees and contractors often have access to confidential information, such as personal data about identifiable individuals. Under no circumstances is it permissible for employees to acquire access to confidential data unless such access is required by their jobs. Under no circumstances may employees or contractors disseminate any confidential information that they have rightful access to, unless such dissemination is required by their jobs.

5. COPYRIGHT PROTECTION

All software and program upgrades must be purchased through the Commission's regular purchasing procedure. Computer programs are valuable intellectual property. Software publishers can be very aggressive in protecting their property rights from infringement. In addition to software, legal protections can also exist for any information

published on the Internet, such as the text and graphics on a web site. As such, it is important that users respect the rights of intellectual property owners. Users should exercise care and judgement when copying or distributing computer programs, files or information that could reasonably be expected to be copyrighted.

6. COMPUTER VIRUSES/SYSTEM COMPATIBILITY

Users should exercise reasonable precautions in order to prevent the introduction of a computer virus into the local area or wide area networks. Files, including free program upgrades, should not be downloaded from the Internet without the approval of Information Systems unit personnel. Virus scanning software should be used to check any software obtained from any non-Commission source. In addition, executable files (program files that end in ".exe") should not be stored on or run from network drives. Users should also be wary of unfamiliar e-mail messages as they may contain computer viruses. Finally, it is a good practice to scan floppy disks periodically to see if they have been infected.

7. NETWORK SECURITY

All desktop computers are connected to a local area network, which links computers within the Commission and, through the wide area network, to most other computers in state government. As such, it is critically important that users take particular care to avoid compromising the security of the network. Most importantly, users should never share their passwords with anyone else, and should promptly notify Information Systems unit personnel if they suspect their passwords have been compromised. In addition, users who will be leaving their PCs unattended for extended periods

should either log off the network or have a password-protected screen savers in operation. Finally, users are only allowed to access the Internet or other external networks through the statewide network unless they have received specific permission from Information Systems unit personnel.

8. E-MAIL

When using e-mail, there are several points users should consider. First, because e-mail addresses identify the organization that sent the message (first.last@state.ma.us), users should consider e-mail messages to be the equivalent of letters sent on official letterhead. For the same reason, users should ensure that all e-mails are written in a professional and courteous tone. Users should not write anything in an e-mail message that they would not feel just as comfortable putting into a memorandum. Additionally, since e-mail communications can be intercepted, stored, forwarded, altered and misused, Commission policy prohibits sending e-mail messages that contain personal or confidential information. Users should also discourage senders from including such information in e-mail messages sent to the Commission.

9. NO EXPECTATION OF PRIVACY

Commission ITRs are the property of the Commission and are to be used in conformance with this policy. The Commission retains, and when reasonable and in pursuit of legitimate needs for supervision, control, and the efficient and proper operation of the workplace, the Commission will exercise the right to inspect any user's computer, any data contained in it, and any data sent or received by that computer without notice to the user. Users should be aware that network

administrators, in order to ensure proper network operations, routinely monitor network traffic and Internet usage. Use of Commission ITRs constitutes express consent for the Commission to monitor and/or inspect any data that users create or receive, any messages they send or receive, and any web sites that they access.



4. PERAC Confidentiality Agreement

The records and files of the Public Employee Retirement Administration Commission hold many items of personal data, including but not limited to medical records, tax returns and social security numbers. I acknowledge that all employees of the Commission have a duty of confidentiality as to personal and confidential information. As required by state law (G.L. c. 66A), I promise and affirm that I will hold all information I gain through my employment with the Commission as confidential to both those outside the Commission and to those within the Commission who do not have a need for that information. I will only release such information where release is consistent with the law and after consultation with the appropriate Commission personnel.

SIGNATURE

PRINT NAME

DATE

5. G.L. c. 4, § 7, cl. 26 Definitions of Statutory Terms; Statutory Construction

SECTION 7.

Section 7. In construing statutes the following words shall have the meanings herein given, unless a contrary intention clearly appears:

Twenty-sixth, “Public records” shall mean all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose, unless such materials or data fall within the following exemptions in that they are:

(a) specifically or by necessary implication exempted from disclosure by statute;

(b) related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding;

(c) personnel and medical files or information; also any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy;

(d) inter-agency or intra-agency memoranda or letters relating to policy positions being developed by the agency; but this subclause shall not apply to reasonably completed factual studies or reports on which the development of such policy positions has been or may be based;

(e) notebooks and other materials prepared by an employee of the commonwealth which are personal to him and not maintained as part of the files of the governmental unit;

(f) investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest;

(g) trade secrets or commercial or financial information voluntarily provided to an agency for use in developing governmental policy and upon a

promise of confidentiality; but this subclause shall not apply to information submitted as required by law or as a condition of receiving a governmental contract or other benefit;

(h) proposals and bids to enter into any contract or agreement until the time for the opening of bids in the case of proposals or bids to be opened publicly, and until the time for the receipt of bids or proposals has expired in all other cases; and inter-agency or intra-agency communications made in connection with an evaluation process for reviewing bids or proposals, prior to a decision to enter into negotiations with or to award a contract to, a particular person;

(i) appraisals of real property acquired or to be acquired until (1) a final agreement is entered into; or (2) any litigation relative to such appraisal has been terminated; or (3) the time within which to commence such litigation has expired;

(j) the names and addresses of any persons contained in, or referred to in, any applications for any licenses to carry or possess firearms issued pursuant to chapter one hundred and forty or any firearms identification cards issued pursuant to said chapter one hundred and forty and the names and addresses on sales or transfers of any firearms, rifles, shotguns, or machine guns or ammunition therefor, as defined in said chapter one hundred and forty and the names and addresses on said licenses or cards;

[There is no subclause (k).]

(l) questions and answers, scoring keys and sheets and other materials used to develop, administer or score a test, examination or assessment instrument; provided, however, that such materials are intended to be used for another test, examination or assessment instrument;

(m) contracts for hospital or related health care services between (i) any hospital, clinic or other health care facility operated by a unit of state, county or municipal government and (ii) a health

maintenance organization arrangement approved under chapter one hundred and seventy-six I, a nonprofit hospital service corporation or medical service corporation organized pursuant to chapter one hundred and seventy-six A and chapter one hundred and seventy-six B, respectively, a health insurance corporation licensed under chapter one hundred and seventy-five or any legal entity that is self insured and provides health care benefits to its employees.

Any person denied access to public records may pursue the remedy provided for in section ten of chapter sixty-six. ◆

6. G.L. c. 66

Public Records

CHAPTER 66: SECTION 1. SUPERVISION OF PUBLIC RECORDS; POWERS AND DUTIES.

Section 1. The supervisor of public records, in this chapter called the supervisor of records, shall take necessary measures to put the records of the commonwealth, counties, cities or towns in the custody and condition required by law and to secure their preservation. He shall see that the records of churches, parishes or religious societies are kept in the custody and condition contemplated by the various laws relating to churches, parishes or religious societies, and for these purposes he may expend from the amount appropriated for expenses such amount as he considers necessary. The supervisor of records shall adopt regulations pursuant to the provisions of chapter thirty A to implement the provisions of this chapter.

SECTION 2.

Repealed, 1977, 80, Sec. 1.

SECTION 3. "RECORD", DEFINED; QUALITY OF PAPER AND FILM; MICROFILM RECORDS.

Section 3. The word "record" in this chapter shall mean any written or printed book or paper, or any photograph, microphotograph, map or plan. All written or printed public records shall be entered or recorded on paper made of linen rags and new cot-

ton clippings, well sized with animal sizing and well finished, or on one hundred per cent bond paper sized with animal glue or gelatin and preference shall be given to paper of American manufacture marked in water line with the name of the manufacturer. All photographs, microphotographs, maps and plans which are public records shall be made of materials approved by the supervisor of records. Public records may be made by handwriting, or by typewriting, or in print, or by the photographic process, or by the microphotographic process, or by any combination of the same. When the photographic or microphotographic process is used, the recording officer, in all instances where the photographic print or microphotographic film is illegible or indistinct, may make, in addition to said photographic or microphotographic record, a typewritten copy of the instrument, which copy shall be filed in a book kept for the purpose. In every such instance the recording officer shall cause cross references to be made between said photographic or microphotographic record and said typewritten record. If in the judgment of the recording officer an instrument offered for record is so illegible that a photographic or microphotographic record thereof would not be sufficiently legible, he may, in addition to the making of such record, retain the original in his custody, in which case a photographic or other attested copy thereof shall be given to the person offering the same for record, or to such person as he may designate.

Subject to the provisions of sections one and

nine, a recording officer adopting a system which includes the photographic process or the microphotographic process shall thereafter cause all records made by either of said processes to be inspected at least once in every three years, correct any fading or otherwise faulty records and make report of such inspection and correction to the supervisor of records.

**SECTION 4.
REGULATION OF
RECORDING MATERIALS
AND DEVICES;
MANDAMUS.**

Section 4. No ink shall be used upon any permanent public record except ink of such a standard as established and approved by the supervisor of records, and no ribbon, pad or other device used for printing by typewriting machines, or stamping pad, or any ink contained in such ribbon, pad, device, stamping pad or carbon paper, shall be used upon any permanent public record, nor shall any photographic machine or device or chemical used in connection therewith be used in making any permanent public record, except such as has been approved by the supervisor of records, who may cancel his approval if he finds that any article so approved is inferior to the standard established by him. The supreme judicial or superior court shall have jurisdiction in mandamus, on petition of the supervisor of records and pursuant to section five of chapter two hundred and forty-nine, to order compliance with the provisions of this section.

**SECTION 5.
MUNICIPAL RECORDS;
COPIES.**

Section 5. County commissioners, city councils and selectmen may cause copies of records of

counties, cities or towns, of town proprietaries, or proprietors of plantations, townships or common lands, relative to land situated in their county, city or town or of easements relating thereto, to be made for their county, city or town, whether such records are within or without the commonwealth, and such records within the commonwealth may be delivered by their custodians to any county, city or town for such copying. City councils and selectmen may also cause copies to be made of the records of births, baptisms, marriages and deaths kept by a church or parish in their city or town.

**SECTION 5A.
RECORDS OF MEETINGS
OF BOARDS AND
COMMISSIONS;
CONTENTS.**

Section 5A. The records, required to be kept by sections eleven A of chapter thirty A, nine F of chapter thirty-four and twenty-three B of chapter thirty-nine, shall report the names of all members of such boards and commissions present, the subjects acted upon, and shall record exactly the votes and other official actions taken by such boards and commissions; but unless otherwise required by the governor in the case of state boards, commissions and districts, or by the county commissioners in the case of county boards and commissions, or the governing body thereof in the case of a district, or by ordinance or by-law of the city or town, in the case of municipal boards, such records need not include a verbatim record of discussions at such meetings.

SECTION 6.

RECORDS OF PUBLIC PROCEEDINGS; PREPARATION; CUSTODY.

Section 6. Every department, board, commission or office of the commonwealth or of a county, city or town, for which no clerk is otherwise provided by law, shall designate some person as clerk, who shall enter all its votes, orders and proceedings in books and shall have the custody of such books, and the department, board, commission or office shall designate an employee or employees to have the custody of its other public records. Every sole officer in charge of a department or office of the commonwealth or of a county, city or town having public records in such department or office shall have the custody thereof.

SECTION 7.

CUSTODY OF OLD AND OTHER RECORDS.

Section 7. Every town clerk shall have the custody of all records of proprietors of towns, townships, plantations or common lands, if the towns, townships, plantations or common lands to which such records relate, or the larger part thereof, are within his town and the proprietors have ceased to be a body politic. The state secretary, clerks of the county commissioners and city or town clerks shall respectively have the custody of all other public records of the commonwealth or of their respective counties, cities or towns, if no other disposition of such records is made by law or ordinance, and shall certify copies thereof.

SECTION 8.

PRESERVATION AND DESTRUCTION OF RECORDS, BOOKS AND PAPERS.

Section 8. Every original paper belonging to the files of the commonwealth or of any county, city or town, bearing date earlier than the year eighteen hundred and seventy, every book of registry or record, except books which the supervisor of public records determines may be destroyed, every town warrant, every deed to the commonwealth or to any county, city or town, every report of an agent, officer or committee relative to bridges, public ways, sewers or other state, county or municipal interests not required to be recorded in a book and not so recorded, shall be preserved and safely kept; and every other paper belonging to such files shall be kept for seven years after the latest original entry therein or thereon, unless otherwise provided by law or unless such records are included in disposal schedules approved by the records conservation board for state records or by the supervisor of public records for county, city, or town records; and no such paper shall be destroyed without the written approval of the supervisor of records. Notwithstanding the foregoing, the register of deeds in any county may, without such written approval, destroy any papers pertaining to attachments or to the dissolution or discharge thereof in the files of his office following the expiration of twenty years after the latest original entry therein or thereon, unless otherwise specifically provided by law, and he may destroy all original instruments left for record and not called for within five years after the recording thereof.

SECTION 8A.

DESTRUCTION OF CERTAIN RECORDS BY CITY AND TOWN CLERKS IF MICRO-PHOTOGRAPHED.

Section 8A. Any provision of general or special law to the contrary notwithstanding, the clerk of any city or town, with the written approval of the supervisor of records, may destroy any index of instruments made by any clerk of such city or town under the provision of law now embodied in section fifteen of chapter forty-one or any original record made by any such clerk under any of the provisions of law now embodied in section eleven of chapter two hundred and nine, section three of chapter two hundred and fifty-five, or any similar statute; provided, that such index or record, as the case may be, has been, or shall have been, micro-photographed, and that twenty years has, or shall have expired after the making of such index or record. The micro-photograph of any index or record so destroyed shall have the same force and effect as the original index or record from which such micro-photograph was made.

SECTION 9.

PRESERVATION AND COPYING OF WORN, ETC., RECORDS.

Section 9. Every person having custody of any public record books of the commonwealth, or of a county, city or town shall, at its expense, cause them to be properly and substantially bound. He shall have any such books, which may have been left incomplete, made up and completed from the files and usual memoranda, so far as practicable. He shall cause fair and legible copies to be seasonably made of any books which are worn, mutilated

or are becoming illegible, and cause them to be repaired, rebound or renovated. He may cause any such books to be placed in the custody of the supervisor of records, who may have them repaired, renovated or rebound at the expense of the commonwealth, county, city or town to which they belong. Whoever causes such books to be so completed or copied shall attest them, and shall certify, on oath, that they have been made from such files and memoranda or are copies of the original books. Such books shall then have the force of the original records.

SECTION 10.

PUBLIC INSPECTION AND COPIES OF RECORDS; PRESUMPTION; EXCEPTIONS.

Section 10. (a) Every person having custody of any public record, as defined in clause Twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search. The following fees shall apply to any public record in the custody of the state police, the Massachusetts bay transportation authority police or any municipal police department or fire department: for preparing and mailing a motor vehicle accident report, five dollars for not more than six pages and fifty cents for each additional page; for preparing and mailing a fire insurance report, five dollars for not more than six pages plus

fifty cents for each additional page; for preparing and mailing crime, incident or miscellaneous reports, one dollar per page; for furnishing any public record, in hand, to a person requesting such records, fifty cents per page. A page shall be defined as one side of an eight and one-half inch by eleven inch sheet of paper.

(b) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have juris-

dition to order compliance.

(c) In any court proceeding pursuant to paragraph (b) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(d) The clerk of every city or town shall post, in a conspicuous place in the city or town hall in the vicinity of the clerk's office, a brief printed statement that any citizen may, at his discretion, obtain copies of certain public records from local officials for a fee as provided for in this chapter.

The executive director of the criminal history systems board, the criminal history systems board and its agents, servants, and attorneys including the keeper of the records of the firearms records bureau of said department, or any licensing authority, as defined by chapter one hundred and forty shall not disclose any records divulging or tending to divulge the names and addresses of persons who own or possess firearms, rifles, shotguns, machine guns and ammunition therefor, as defined in said chapter one hundred and forty and names and addresses of persons licensed to carry and/or possess the same to any person, firm, corporation, entity or agency except criminal justice agencies as defined in chapter six and except to the extent such information relates solely to the person making the request and is necessary to the official interests of the entity making the request.

The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, correctional and any other public safety and criminal justice system personnel shall not be public records in the custody of the employers of such personnel and shall not be disclosed; provided, however, that such information may be disclosed to an employee organization under chapter one hundred and fifty E or to a criminal justice

agency as defined in section one hundred and sixty-seven of chapter six. The name and home address and telephone number of a family member of any such personnel shall not be public records in the custody of the employers of the foregoing persons and shall not be disclosed. The home address and telephone number, or place of employment or education of victims of adjudicated crimes and of persons providing or training in family planning services and the name and home address and telephone number, or place of employment or education of a family member of any of the foregoing shall not be public records in the custody of a government agency which maintains records identifying such persons as falling within such categories and shall not be disclosed.

**SECTION 11.
FIREPROOF VAULTS AND
SAFES.**

Section 11. Officers in charge of a state department, county commissioners, city councils and selectmen shall, at the expense of the commonwealth, county, city or town, respectively, provide and maintain fireproof rooms, safes or vaults for the safe keeping of the public records of their department, county, city or town, other than the records in the custody of teachers of the public schools, and shall furnish such rooms with fittings of non-combustible materials only.

**SECTION 12.
ARRANGEMENT OF
RECORDS.**

Section 12. All such records shall be kept in the rooms where they are ordinarily used, and so arranged that they may be conveniently examined and referred to. When not in use, they shall be kept

in the fireproof rooms, vaults or safes provided for them.

**SECTION 13.
CUSTODIAN TO DEMAND
RECORDS; COMPELLING
COMPLIANCE.**

Section 13. Whoever is entitled to the custody of public records shall demand the same from any person having possession of them, who shall forthwith deliver the same to him. Upon complaint of any public officer entitled to the custody of a public record, the superior court shall have jurisdiction in equity to compel any person unlawfully having such record in his possession to deliver the same to the complainant.

**SECTION 14.
SURRENDER OF RECORDS
BY RETIRING OFFICER.**

Section 14. Whoever has custody of any public records shall, upon the expiration of his term of office, employment or authority, deliver over to his successor all such records which he is not authorized by law to retain, and shall make oath that he has so delivered them, accordingly as they are the records of the commonwealth or of a county, city or town, before the state secretary, the clerk of the county commissioners or the city or town clerk, who shall, respectively, make a record of such oath.

**SECTION 15.
PENALTIES.**

Section 15. Whoever unlawfully keeps in his possession any public record or removes it from the room where it is usually kept, or alters, defaces, mutilates or destroys any public record or violates any provision of this chapter shall be punished by

a fine of not less than ten nor more than five hundred dollars, or by imprisonment for not more than one year, or both. Any public officer who refuses or neglects to perform any duty required of him by this chapter shall for each month of such neglect or refusal be punished by a fine of not more than twenty dollars.

SECTION 16.

SURRENDER OF CHURCH RECORDS; JURISDICTION OF SUPERIOR COURT.

Section 16. If a church, parish, religious society, monthly meeting of the people called Friends or Quakers, or any similar body of persons who have associated themselves together for holding religious meetings, shall cease for the term of two years to hold such meetings, the persons having the care of any records or registries of such body, or of any officers thereof, shall deliver all such records, except records essential to the control of any property or trust funds belonging to such body, to the custodian of a depository provided by the state organization of the particular denomination or to the clerk of the city or town where such body is situated and such clerk may certify copies thereof upon the payment of the fee as provided by clause (25) of section thirty-four of chapter two hundred and sixty-two. If any such body, the records or registries of which, or of any officers of which, have been so delivered, shall resume meetings under its former name or shall be legally incorporated, either alone or with a similar body, the clerk of such city or town or the custodian of said depository shall, upon written demand by a person duly authorized, deliver such records or registries to him if he shall in writing certify that to the best of his knowledge and belief said meetings are to be continued or such

incorporation has been legally completed. The superior court shall have jurisdiction in equity to enforce this section.

SECTION 17.

MUNICIPALITY IN WHICH RECORDS TO BE KEPT; PENALTY.

Section 17. Except as otherwise provided by law, all public records shall be kept in the custody of the person having the custody of similar records in the county, city or town to which they originally belonged, and if not in his custody shall be demanded by him of the person having possession thereof, and shall forthwith be delivered by such person to him. Whoever refuses or neglects to perform any duty required of him by this section shall be punished by a fine of not more than twenty dollars.

SECTION 17A.

PUBLIC ASSISTANCE RECORDS; PUBLIC INSPECTION; DESTRUCTION.

Section 17A. The records of the department of transitional assistance, relative to all public assistance, and the records of the commission for the blind relative to aid to the blind, shall be public records; provided that they shall be open to inspection only by public officials of the commonwealth, which term shall include members of the general court, representatives of the federal government and those responsible for the preparation of annual budgets for such public assistance, the making of recommendations relative to such budgets, or the approval or authorization of payments for such assistance, or for any purposes directly connected with the administration of such public assistance or with the administration of

chapter one hundred and eighteen F or with the administration of child support enforcement under chapter one hundred and nineteen A, including the use of said records in set-off debt collections under chapter sixty-two D, and including the use of said records by the department of transitional assistance, in concert with related wage reports to ascertain or confirm any fraud, abuse or improper payments to an applicant for or recipient of public assistance; and provided, further, that data from said records may be made available to representatives of the department of education and local school committees solely for the purpose of targeting school attendance areas with the largest concentrations of low income children pursuant to 20 USC 2701 et seq.

SECTION 17B.

Repealed, 1973, 1050, Sec. 4.

SECTION 17C.

FAILURE TO MAINTAIN PUBLIC RECORDS OF MEETINGS; ORDERS TO MAINTAIN.

Section 17C. Upon proof of failure of a governmental body as defined in section eleven A of chapter thirty A, section nine F of chapter thirty-four and section twenty-three A of chapter thirty-nine, or by any member or officer thereof to carry out any of the provisions prescribed by this chapter for maintaining public records, a justice of the supreme judicial or the superior court sitting within and for the county in which such governmental body acts or, in the case of a governmental body of the commonwealth, sitting within and for any county, shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out the provisions of this

chapter. Such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney for the county in which the governmental body acts. The order of notice on the complaint shall be returnable no later than ten days after the filing thereof and the complaint shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of this section. In the hearing of any such complaint the burden shall be on the respondent to show by a preponderance of the evidence that the actions complained of in such complaint were in accordance with and authorized by section eleven B of chapter thirty A, by section nine G of chapter thirty-four or by section twenty-three B of chapter thirty-nine. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Any such order may also, when appropriate, require the records of any such meeting of a governmental body to be made a public record unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized by section eleven B of chapter thirty A, by section nine G of chapter thirty-four or by section twenty-three B of chapter thirty-nine. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy.

**SECTION 17D.
MASSACHUSETTS
NATURAL HERITAGE
PROGRAM DATA BASE;
DIVISION RECORDS;
SITE-SPECIFIC RARE
SPECIES INFORMATION.**

Section 17D. Records of the division of fisheries and wildlife in the department of fisheries, wildlife and recreational vehicles known as the Massachusetts natural heritage program data base shall not be public records; provided, however, that they shall be open for inspection by agents of the commonwealth and the federal government for the purposes of protecting and preserving species and subspecies of nongame wildlife and

indigenous plants. Except as otherwise determined by the administrator of the said data base, site-specific rare species information shall be released only upon the receipt of a statement, in writing, by the recipient that he shall keep such information confidential.

**SECTION 18.
APPLICATION OF
CHAPTER.**

Section 18. This chapter shall not apply to the records of the general court, nor shall declarations, affidavits and other papers filed by claimants in the office of the commissioner of veterans' services, or records kept by him for reference by the officials of his office, be public records. ♦

7. G.L. c. 66A

Fair Information

Practices

CHAPTER 66A: SECTION 1.

DEFINITIONS.

Section 1. As used in this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise:—

“Agency”, any agency of the executive branch of the government, including but not limited to any constitutional or other office, executive office, department, division, bureau, board, commission or committee thereof; or any authority created by the general court to serve a public purpose, having either statewide or local jurisdiction.

“Automated personal data system”, a personal data system in which personal data is stored, in whole or part, in a computer or in electronically controlled or accessible files.

“Computer accessible”, recorded on magnetic tape, magnetic film, magnetic disc, magnetic drum, punched card, or optically scannable paper or film.

“Criminal justice agency”, an agency at any level of government which performs as its principal function activity relating to (a) the apprehension, prosecution, defense, adjudication, incarceration, or rehabilitation of criminal offenders; or (b) the collection, storage, dissemination, or usage of criminal offender record information.

“Data subject”, an individual to whom personal data refers. This term shall not include corporations, corporate trusts, partnerships, limited partnerships, trusts or other similar entities.

“Holder”, an agency which collects, uses, maintains or disseminates personal data or any person or entity which contracts or has an arrangement with an agency whereby it holds personal data as part or as a result of performing a governmental or public function or purpose. A holder which is not an agency is a holder, and subject to the provisions of this chapter, only with respect to personal data so held under contract or arrangement with an agency.

“Manual personal data system”, a personal data system which is not an automated or other electronically accessible or controlled personal data system.

“Personal data”, any information concerning an individual which, because of name, identifying number, mark or description can be readily associated with a particular individual; provided, however, that such information is not contained in a public record, as defined in clause Twenty-sixth of section seven of chapter four and shall not include intelligence information, evaluative information or criminal offender record information as defined in section one hundred and sixty-seven of chapter six.

“Personal data system”, a system of records containing personal data, which system is organized such that the data are retrievable by use of the identity of the data subject.

**SECTION 2.
HOLDERS MAINTAINING
PERSONAL DATA SYSTEM;
DUTIES.**

Section 2. Every holder maintaining personal data shall:—

(a) identify one individual immediately responsible for the personal data system who shall insure that the requirements of this chapter for preventing access to or dissemination of personal data are followed;

(b) inform each of its employees having any responsibility or function in the design, development, operation, or maintenance of the personal data system, or the use of any personal data contained therein, of each safeguard required by this chapter, of each rule and regulation promulgated pursuant to section three which pertains to the operation of the personal data system, and of the civil remedies described in section three B of chapter two hundred and fourteen available to individuals whose rights under chapter sixty-six A are allegedly violated;

(c) not allow any other agency or individual not employed by the holder to have access to personal data unless such access is authorized by statute or regulations which are consistent with the purposes of this chapter or is approved by the data subject whose personal data are sought if the data subject is entitled to access under clause (i). Medical or psychiatric data may be made available to a physician treating a data subject upon the request of said physician, if a medical or psychiatric emergency arises which precludes the data subject's giving approval for the release of such data, but the data subject shall be given notice of such access upon termination of the emergency. A holder shall provide lists of names and addresses of applicants for professional licenses and lists of professional

licensees to associations or educational organizations recognized by the appropriate professional licensing or examination board. A holder shall comply with a data subject's request to disseminate his data to a third person if practicable and upon payment, if necessary, of a reasonable fee; provided, however, that nothing in this section shall be construed to prohibit disclosure to or access by the bureau of special investigations to the records or files of the department of transitional assistance for the purposes of fraud detection and control;

(d) take reasonable precautions to protect personal data from dangers of fire, theft, flood, natural disaster, or other physical threat;

(e) comply with the notice requirements set forth in section sixty-three of chapter thirty;

(f) in the case of data held in automated personal data systems, and to the extent feasible with data held in manual personal data systems, maintain a complete and accurate record of every access to and every use of any personal data by persons or organizations outside of or other than the holder of the data, including the identity of all such persons and organizations which have gained access to the personal data and their intended use of such data and the holder need not record any such access of its employees acting within their official duties;

(g) to the extent that such material is maintained pursuant to this section, make available to a data subject upon his request in a form comprehensible to him, a list of the uses made of his personal data, including the identity of all persons and organizations which have gained access to the data;

(h) maintain personal data with such accuracy, completeness, timeliness, pertinence and relevance as is necessary to assure fair determination of a data subject's qualifications, character, rights, opportunities, or benefits when such determinations are based upon such data;

(i) inform in writing an individual, upon his

request, whether he is a data subject, and if so, make such data fully available to him or his authorized representative, upon his request, in a form comprehensible to him, unless doing so is prohibited by this clause or any other statute. A holder may withhold from a data subject for the period hereinafter set forth, information which is currently the subject of an investigation and the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest, but this sentence is not intended in any way to derogate from any right or power of access the data subject might have under administrative or judicial discovery procedures. Such information may be withheld for the time it takes for the holder to complete its investigation and commence an administrative or judicial proceeding on its basis, or one year from the commencement of the investigation or whichever occurs first. In making any disclosure of information to a data subject pursuant to this chapter the holder may remove personal identifiers relating to a third person, except where such third person is an officer or employee of government acting as such and the data subject is not. No holder shall rely on any exception contained in clause Twenty-sixth of section seven of chapter four to withhold from any data subject personal data otherwise accessible to him under this chapter;

(j) establish procedures that (1) allow each data subject or his duly authorized representative to contest the accuracy, completeness, pertinence, timeliness, relevance or dissemination of his personal data or the denial of access to such data maintained in the personal data system and (2) permit personal data to be corrected or amended when the data subject or his duly authorized representative so requests and there is no disagreement concerning the change to be made or, when there is disagreement with the data

subject as to whether a change should be made, assure that the data subject's claim is noted and included as part of the data subject's personal data and included in any subsequent disclosure or dissemination of the disputed data;

(k) maintain procedures to ensure that no personal data are made available in response to a demand for data made by means of compulsory legal process, unless the data subject has been notified of such demand in reasonable time that he may seek to have the process quashed;

(l) not collect or maintain more personal data than are reasonably necessary for the performance of the holder's statutory functions.

SECTION 3. RULES AND REGULATIONS.

Section 3. The secretary of each executive office shall promulgate rules and regulations to carry out the purposes of this chapter which shall be applicable to all agencies, departments, boards, commissions, authorities, and instrumentalities within each of said executive offices subject to the approval of the commissioner of administration. The department of community affairs shall promulgate rules and regulations to carry out the purposes of this chapter which shall be applicable to local housing and redevelopment authorities of the cities and towns. Any agency not within any such executive office shall be subject to the regulations of the commissioner of administration. The attorney general, the state secretary, the state treasurer and the state auditor shall adopt applicable regulations for their respective departments. ◆

8. 840 CMR

6.00: Standard Rules for Disclosure of Information

SECTION

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6.12: RECORDS OF RETIREMENT BOARD MEETINGS

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6.14: OBJECTIONS AND ADMINISTRATIVE APPEALS

840 CMR 6.00 is the standard rule for disclosure of information promulgated by the Commissioner of Public Employee Retirement pursuant to M.G.L. c. 7, §§ 50(a) and 50(n). Except as otherwise provided by the Commissioner, by supplementary rules of a particular retirement board approved by the Commissioner pursuant to 840 CMR 14.02, or by statute, 840 CMR 6.00 shall govern the release of all records in the custody of any retirement board in the Commonwealth. The release of records in the custody of retirement boards subject to M.G.L. c. 66A shall be governed by M.G.L. c. 66A, 801 CMR 2.00 and 3.00 and 840 CMR 6.00.

6.01: DEFINITIONS

Unless a different meaning is plainly required by the context, words and phrases used in 840 CMR 6.00 shall have the meanings assigned them by M.G.L. c. 4, § 7(26), M.G.L. c. 30A, §§ 11A and 11A1/2, M.G.L. c. 32, M.G.L. c. 34, §§ 9F and 9G, M.G.L. c. 39, §§ 23A and 23B, and M.G.L. c. 66A, § 1, and if no meaning is so assigned, they shall have their ordinary meanings.

6.02: PURPOSE OF STANDARD RULES

The purpose of 840 CMR 6.00 is to establish uniform standards and procedures to be applied by retirement boards in maintaining and disclosing records, particularly records containing personal data. A retirement board shall provide access to public records as required by M.G.L. c. 66, § 10 and shall protect personal data which it holds as required by M.G.L. c. 66A and 840 CMR 6.00.

6.03: PRIVACY STANDARDS

(1) Without the written consent of the data subject or his or her authorized representative, no

retirement board shall disclose to any person outside of the board any personal information contained in a personnel or medical file which may be identified or associated with the data subject or other materials or data pertaining to a specifically named individual if such disclosure may constitute an unwarranted invasion of personal privacy unless such disclosure is required by Federal or State statute or regulation.

(2) In determining whether personal information other than that contained in a personnel or medical file is a public record, a retirement board shall balance the seriousness of any invasion of privacy which release of the record may cause against the public's right to know about the contents of the record, and shall consider whether the public interest in obtaining the information substantially outweighs the seriousness of any potential invasion of privacy.

(3) In general, the determination whether release of materials or data may constitute an unwarranted invasion of personal privacy must be made on a case by case basis. However, the board shall not release records containing intimate details of a highly personal nature, such as information related to alcohol or drug problems, mental health problems, or the like, without the written consent of the data subject or an order of a court of competent jurisdiction.

(4) In making the determination whether the privacy exemption to the public records law limits disclosure of information a retirement board shall observe the following principles:

- (a) Information relating to a member's name, address, and type of retirement (e.g. superannuation, ordinary disability, accidental disability, veteran status, etc.) is generally a public record;
- (b) Medical files or information relating to a specifically named individual, including, the medical reason for a disability retirement, shall not be considered a public record;

(c) Other material or data relating to a specifically named individual is generally not a public record if the information contained in the record relates to intimate details of a highly personal nature.

(5) Any record pertaining to meetings of a retirement board including records pertaining to the financial operation of the board shall be presumed to be a public record unless the record is exempt from disclosure by 840 CMR 6.12.

(6) If a record contains both public and non-public information, the retirement board shall release as a public record any segregable portion of such record which is an independent public record.

(7) Retirement board studies and reports based upon personal data held by the board may be disclosed if all personal identifiers have been removed and no data subject can otherwise be identified by the nature, content or context of such studies or reports.

**6.04: CUSTODIAN;
DESIGNATION; DUTIES
AND RESPONSIBILITIES;
FEES**

(1) Designation. Each retirement board shall designate a person to serve as Custodian of all records which the retirement board holds.

(2) Duties and Responsibilities. The Custodian shall:

(a) maintain custody of and control over all records held by the retirement board.

(b) take all reasonable precautions to protect the records from fire, theft, flood, natural disaster, unauthorized removal or other security hazard;

(c) inform members and staff of the retirement board of the provisions of 840 CMR 6.00;

(d) insure that the number of duplicate retire-

ment files is maintained at an absolute minimum and that any such duplicate files are maintained consistent with the requirements of 840 CMR 6.00;

(e) develop and implement a plan for the expungement of obsolete records with approval, where applicable, of the Records Conservation Board established by M.G.L. c. 30, § 42, and the Supervisor of Public Records pursuant to M.G.L. c. 66, § 8;

(f) maintain to the maximum extent feasible a complete and accurate record, which shall be deemed part of the data to which it relates for all purposes under 840 CMR 6.00, of every access to or use of a member's retirement file, including the identity of all persons and organizations to whom such access has been granted and their declared intentions regarding the use of the records disclosed, except that no record need be maintained of any such access to or use by members or staff of the retirement board, medical panel members, or representatives of the Division of Public Employee Retirement Administration;

(g) make the initial determination as to whether any record requested is a public record and as to whether access to the record requested is mandated by M.G.L. c. 4, § 7(26), or by other applicable law or regulation;

(h) assess and collect fees as provided in 840 CMR 6.04(3);

(i) receive objections as provided in 840 CMR 6.14;

(j) answer questions; and

(k) make available on request copies of M.G.L. c. 4, § 7(26), M.G.L. c. 66, § 10 (the Massachusetts Freedom of Information Act), applicable provisions of M.G.L. c. 66A (the Massachusetts Fair Information Practices Act), and 801 CMR 2.00 and 3.00, applicable

provisions of M.G.L. c. 30A, §§ 11A and 11A1/2 (the Open Meeting Law governing state agencies), M.G.L. c. 34, §§ 9F and 9G (the Open Meeting Law governing county agencies), and M.G.L. c. 39, §§ 23A and 23B (the Open Meeting Law governing municipal agencies) and 840 CMR 6.00.

(3) Fees. The Custodian may charge a reasonable fee for copies of any record consistent with the fee schedule issued by the Supervisor of Public Records pursuant to 950 CMR 32.02(5). A fee reasonably related to cost may also be charged for making a search for the requested record provided that no charge may be made for a search requiring less than 20 minutes to complete. The retirement board may waive the reproduction fee or the search fee if, in its judgment, such waiver would be in the public interest.

6.05: NOTICE AND REPORT TO THE DIVISION OF PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION

The retirement board shall by July 1, 1985, and upon the subsequent establishment, termination, or change in character of a retirement file system submit a report to the Division of Public Employee Retirement Administration regarding the retirement file system it operates. Such report shall include, but not necessarily be limited to the following information:

- (1) The name of the system and the name and address of the Retirement Board;
- (2) The nature and purpose of the system;
- (3) The identification of the types, categories, uses and sources of data held in the system;
- (4) The approximate number of individuals about whom data are held in the system;
- (5) Whether and to what extent the data are held

in computerized form;

(6) A description of each person and organization having access to the system;

(7) A description of the policies and practices of the board with regard to data maintenance, retention, and disposal;

(8) A description of the manner in which any individual, who believes that data about him are held in the system, may have a search made, and, if such data are so held, may inspect, copy, and object to it as provided in 840 CMR 6.00;

(9) A description of other actions taken to comply with 840 CMR 6.00; and

(10) A statement that this report is available to the public upon request.

6.06: ACCESS TO PERSONAL DATA IN RETIREMENT FILES BY THE DIVISION OF PUBLIC EMPLOYEE RETIREMENT ADMINISTRATION, RETIREMENT BOARDS, AND MEDICAL PANEL PHYSICIANS

The Commissioner, staff and representatives of the Division of Public Employee Retirement Administration, members and staff of the retirement board, and medical panel physicians shall have access to personal data in retirement files to the extent that their duties require such access.

6.07: ACCESS TO PERSONAL DATA IN RETIREMENT FILES BY MEMBERS

(1) Request for Notification of Holding. The Custodian, upon request of a member or his or her authorized representative, shall inform the member in writing, within 20 days of receipt of a request,

whether the retirement board holds, or has held within the previous 24 months, any personal data concerning the member.

(2) Access to Personal Data. A member or his or her authorized representative shall be granted access to all personal data in the member's retirement file except where prohibited by law or judicial order and except as provided in 840 CMR 6.07(3). In making any disclosure of personal data to a member pursuant to 840 CMR 6.07, the Custodian may remove personal identifiers relating to a third person, except where such third person is an officer or employee of government acting as such and the member is not. The Custodian shall not rely on any exception contained in M.G.L. c. 4, § 7(26) to withhold from a member personal data otherwise accessible to him or her under 840 CMR 6.00.

(3) Investigative Data. Except as specifically authorized by the Custodian with the approval of the retirement board, a member or his or her authorized representative shall not be granted access to any information in the member's retirement file which is currently the subject of an investigation and the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest. Such information may be withheld for the time it takes the retirement board to complete its investigation and commence an administrative or judicial proceeding on its basis, or for one year from the commencement of the investigation, whichever occurs first. 840 CMR 6.07(3) shall not affect any rights to access the member may have under administrative or judicial discovery procedures.

(4) Notification of Denial of Access. If access to personal data is denied, the Custodian shall notify the member in writing of such denial, shall state the reasons for such denial, and shall describe the right to appeal provided in 840 CMR 6.14(2).

6.08: ACCESS TO RETIREMENT FILES BY EMPLOYERS

(1) An employer may be granted access to personal data in a member's retirement file bearing on the member's present, former or prospective employment by the employer.

(2) An employer desiring such access shall make a request on Form 6-1 stipulating that the employer shall not disseminate any personal data received except as permitted by M.G.L. c. 66A, where applicable, or 840 CMR 6.00.

(3) If access to personal data is denied, the Custodian shall notify the employer in writing of such denial, the reasons therefor, and the right to appeal as provided in 840 CMR 6.14(2).

6.09: ACCESS TO RETIREMENT FILES BY LEGAL PROCESS

Unless otherwise prohibited by law or judicial order, upon receipt of a subpoena duces tecum, or other order of a court or administrative agency of competent jurisdiction directing the retirement board to produce personal data in a member's retirement file, the Custodian shall notify the member of the demand no later than the next business day following the day on which the subpoena or other document is served and shall not produce any records in response to the demand unless the member has been notified in reasonable time to seek to have the process quashed. If the member is properly notified and if the process is not quashed, the Custodian shall produce a copy of the requested records as ordered by the Court or agency, and shall advise the Court or agency of the requirements of 840 CMR 6.00.

6.10: ACCESS TO PERSONAL DATA IN RETIREMENT FILES BY THE GENERAL PUBLIC

(1) Any person may request access to public records in a member's retirement file pursuant to the procedures provided in 840 CMR 6.11 and M.G.L. c. 66, § 10.

(2) If the custodian determines that data requested are not a public record, he or she shall deny access unless such dissemination of the record is:

(a) authorized by a statute or regulation consistent with the purposes of M.G.L. c. 66A or 840 CMR 6.00;

(b) requested by an employer consenting to observe the provisions of M.G.L. c. 66A applicable to holders of personal data as provided in 840 CMR 6.08;

(c) approved in writing by the member, and the member has a right to access to the requested records by law or 840 CMR 6.00; or

(d) requested by a physician treating a data subject during a medical or psychiatric emergency which precludes the data subject from approving disclosure; provided that notice of disclosure shall be given to the data subject upon termination of the emergency.

(3) Any person seeking access to personal data in a member's file pursuant to 840 CMR 6.10(1)(c) shall submit a written request to the Custodian, on Form 6-2, stating the name of the member, the information sought and the intended use of the information, and agreeing to limit the use of the information to that stated in the statement of intended use. Upon receipt of a request, the Custodian shall send a letter to the member describing these procedures, explaining that the member is under no legal obligation to consent to the release of the information, and enclosing a

copy of the Form 6-2 request. If the member consents in writing to the requested access, the custodian shall grant access as requested. If the member does not respond, or does not so consent, the Custodian shall deny access. The Custodian shall furnish the member, upon request, a copy of any personal data that has been disclosed.

6.11: ACCESS TO PUBLIC RECORDS; PROMPTNESS OF ACCESS; REQUESTS FOR PUBLIC RECORDS

(1) Access to Public Records. The Custodian shall, at reasonable times and without unreasonable delay, permit any public record under his or her inspection to be inspected and examined by any person, under such supervision as may be appropriate, and shall furnish one copy thereof upon payment of a reasonable fee as set forth in 840 CMR 6.04(3). The Custodian shall also permit any person to search the public records of the retirement board in a reasonable manner that does not interfere with the normal functions of the board.

(2) Promptness of Access. The Custodian shall establish and maintain routine procedures for prompt production of public records to persons requesting them. The Custodian shall respond to every request for a public record within three days and, if the request is granted, produce copies of the public records requested within ten days of receipt of the request. If the request is denied, the Custodian shall inform the person requesting the record of the reasons for such denial in writing and the right to appeal provided in 840 CMR 6.14, M.G.L. c. 66, § 10(b), and 950 CMR 32.04.

(3) Request for Public Records. A person may request records either orally or in writing. A retirement board shall require a written request for records only when there is a substantial doubt as to

whether the record requested is a public record, and shall not require such a written request merely to delay production. The Custodian shall provide forms (Form 6-3) for requesting records but any written request is sufficient as long as the record is adequately described therein. Any person seeking access to a public record shall provide a reasonable description that enables the Custodian to identify and locate the record promptly. Superior knowledge of the contents of retirement board files on the part of the Custodian shall be used to facilitate rather than hinder compliance with requests for public records.

6.12: RECORDS OF RETIREMENT BOARD MEETING

(1) The minutes and other records of each retirement board meeting shall be a public record and shall be available upon request as provided herein; provided, however, that the records of any executive session may remain secret as long as disclosure may defeat the lawful purposes for which the session was closed, but no longer.

(2) The retirement board shall periodically review its records of executive sessions to determine whether such records must remain secret. When the retirement board decides that a previously secret executive session record or portion thereof need no longer remain secret, it shall note such decision in the minutes of the retirement board meeting at which such decision is made.

6.13: ADVISORY OPINIONS

(1) Supervisor of Public Records. The Custodian or retirement board may seek an advisory opinion from the Supervisor of Public Records with respect to any question concerning the application of M.G.L. c. 4, § 7(26) or of M.G.L. c. 66, by sending a written request to the Supervisor of Public

Records, Office of the State Secretary, One Ashburton Place, Room 1701, Boston, MA 02108, as provided in 950 CMR 32.03.

(2) Commissioner of Public Employee Retirement. Any Custodian or retirement board may request an advisory opinion from the Commissioner with respect to any question concerning the application of 840 CMR 6.00 to any matter by sending a written request to the Commissioner of Public Employee Retirement, Division of Public Employee Retirement Administration, One Ashburton Place, Room 1101, Boston, MA 02108.

6.14: OBJECTIONS AND ADMINISTRATIVE APPEALS

(1) Objection to Custodian. Any member or his or her authorized representative who objects to the collection, maintenance, dissemination, use, accuracy, completeness, type of, or denial of access to, personal data in his or her retirement file, may file an objection thereto with the Custodian. Upon receipt of such objection, the Custodian shall investigate the validity of the objection. If, after the investigation, the objection is found to be meritorious, the Custodian shall correct the contents of the data or the methods for holding or the use of such data. If the objection is found to lack merit, the Custodian shall provide the member the opportunity to have a statement reflecting his or her views recorded and disseminated with the data in question. In either event, the Custodian shall notify the member in writing of his or her decision within 30 days following receipt of the objection.

(2) Appeals to the Commissioner. Any person aggrieved by a decision of the Custodian under 840 CMR 6.00 may appeal the decision to the Commissioner of Public Employee Retirement by

a written request to the Commissioner at the address listed in 840 CMR 6.13(2). The Commissioner shall review the request and shall make his or her decision promptly. In reviewing the request, the Commissioner may request such information from any person and hold such hearing as will enable him or her to decide the matter.

(3) Appeals to the Supervisor of Records. In the event any Custodian denies access to a record claimed to be a public record, the person making the request may appeal the matter to the Supervisor of Public Records as provided by M.G.L. c. 66, § 10(b) and 950 CMR 32.04.

(4) Judicial Relief. The administrative remedies provided in 840 CMR 6.14 shall not limit administrative or judicial remedies provided in M.G.L. c. 66, § 10, M.G.L. c. 214, § 3B, or any other statute or regulation.

REGULATORY AUTHORITY

840 CMR 6.00: M.G.L. c. 7, § 50; M.G.L. c. 32, §§ 6 and 21.

Notes

